IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1321 OF 1987

Syndicate Bank ....Plaintiffs
V/s.
Synthetic Traders & Ors. ....Defendants

Mr.A.S. Doctor i/b M/s.Kanga & Co. for the Plaintiffs.
None for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 31ST AUGUST, 2006.

P.C. :

1. This is a usual bank suit to recover an amount of Rs.4,22,303/- together with interest. The claim in the sum of Rs.558=68 ps. under the current account is not pressed.

2. Defendant No.2 is the sole proprietor of Defendant No.1. Defendant Nos.3 to 6 are the guarantors. The Plaintiffs' case is that they granted Defendant No.1 a Demand Against Time Bill Discounting Facility (DATBD). Under the facility, Defendant No.1 were to draw the bill of exchange on their customers in favour of the Plaintiffs in respect of the price of the goods sold by Defendant No.1 to its customers. The Plaintiffs were to discount their bills of

exchange and upon such discounting, to advance the amount thereof to Defendant No.1. Such advances were to be treated as a loan repayable with interest at prevailing rates. It was agreed that if the drawees/acceptors dishonoured the bills for any reason, Defendant No.1 would pay the Plaintiffs the amounts advanced as aforesaid with interest.

3. In consideration of the aforesaid, Defendant Nos.2 to 6 executed personal guarantees dated 27.5.1980 upto the limit of Rs.3,00,000/-.

4. Defendant No.1 forwarded to the Plaintiffs three bills of exchange for discounting pursuant to the said facility. These bills of exchange have already been accepted. The Plaintiffs duly discounted the said bills of exchange. The acceptors however, dishonoured the bills of exchange by non-payment. The principal amount of one of the bills was paid. Subsequently the Plaintiffs have given credit for the same.

5. The main defence is that the Plaintiffs have no cause of action as the bills were never presented or protested to Defendant No.1 or Defendant No.2. The defence of limitation has also been raised.

6. The Defendants have also alleged that blank documents were taken by the Plaintiffs.

7. Defendant Nos.3 to 6 i.e. the guarantors also filed a written statement. They have contended that the Plaintiffs suppressed various facts and documents. They have also adopted the defences raised by Defendant Nos.1 and 2.

8. By an order dated 22.3.2006, the following issues were framed :-

ISSUES

1) Whether the Plaintiffs prove that the Defendants are jointly and severally liable to pay to the Plaintiffs under the Time Bills Discounting (DATBD) Facility the sum of Rs.4,22,303=41 as per Particulars of Claim being Exhibit "1"to the Plaint ?

2) Whether the Plaintiffs prove that the Defendants are jointly and severally liable to pay to the Plaintiffs under the Current Account Facility the sum of Rs.558.68 as per

Particulars of Claim being Exhibit "J" to the Plaint ?

3) Whether the Plaintiffs prove that the Defendants are jointly and severally liable to pay to the Plaintiffs further interest at the rate of 19.5% per annum or at any such other rate in respect of the sum of Rs.4,22,303=41 or any such other amount as may be found due and payable by the Defendants to the Plaintiffs under the said DATBD Facility from the date of the filing of the Suit till payment or realisation ?

4) Whether the Plaintiffs prove that the Defendants are jointly and severally liable to pay to the Plaintiffs further interest at the rate of 19.5% per annum or at any such other rate in respect of the sum of Rs.558.68 or any such other amount as may be found due and payable by the defendants to the Plaintiffs under the said Current Account Facility from the date of the filing of the Suit till payment or realisation ?

5) Whether the Defendant No.2 in personal and

individual capacity is jointly and severally liable to pay to the Plaintiffs the amounts claimed by the Plaintiffs in the Suit under the Deed of Guarantee dated 27th May 1980 executed by the Defendant Nos.2, 3, 4, 5 and 6 ?

6) Whether the Defendant Nos.3, 4, 5 and 6 in their personal and individual capacity are jointly and severally liable to pay to the Plaintiffs the amounts claimed by the Plaintiffs in the Suit under the Deed of Guarantee dated 27th May 1980 executed by the Defendant Nos.2, 3, 4, 5 and 6 ?

9. The Plaintiffs examined one Pradnan Mahendra K. by filing his affidavit in lieu of examination-in-chief. He has set out the facts of the case. The compilation of the original documents were tendered in Court, taken on record and marked Exhibit "A" collectively.

10. The issues no doubt are general but I will consider some of the main defences independently as well.

11. The fact that the facility was granted is admitted. The fact that the bills were discounted is also admitted. The fact that the moneys were received by Defendant Nos.1/2 is also admitted.

. There really therefore is no defence to the suit. In fact by various letters, the Defendants have admitted and acknowledged their liability. For instance by a letter dated 12.4.1984, the liability was acknowledged in the sum of Rs.1,99,845=28 ps. Even prior thereto, there were several letters acknowledging the liability.

12. In view of the admissions of liability including the one contained in the letter dated 12.4.1984 and an express promise contained therein to pay the said amount, there is no question of the suit being barred by limitation as the same was filed on 8.4.1987. The Defendants have also not established any of the other defences.

13. In the circumstances, all the issues are answered in favour of the Plaintiffs. The suit decreed in terms of prayers a(i) and (b).

. Refund as per rules.